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CITY OF SAN DIEGO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

VALERIE O'SULLIVAN,

Plaintiff,

v.

CITY OF SAN DIEGO, a municipal entity, and
FOES 1 through 500, inclusive,

Defendant.

) Case No. GIC 826918

) **DECLARATION OF STACEY**
) **LOMEDICO IN SUPPORT OF CITY'S**
) **OPPOSITION TO "JUDGMENT**
) **CREDITOR VALERIE O'SULLIVAN'S**
) **EX PARTE APPLICATION FOR**
) **PARTIAL ENFORCEMENT OF**
) **JUDGMENT" (REMOVAL OF SEALS)**
) **AND REQUEST FOR STAY OF**
) **PROCEEDINGS DUE TO PENDING**
) **LEGISLATION**

) I/C Judge: Hon. Yuri Hofmann
) Dept.: 60
) Hearing Date: May 27, 2009
) Time: 8:30 a.m.

) Cmpl't Filed: March 12, 2004

1. I am the Director of City of San Diego's Department of Park and Recreation.

2. I make this declaration based upon my own personal knowledge, except as
to those matters set forth in this declaration on information and belief, and as to those matters, I
believe them to be true. If called upon to testify as to those matters stated in this declaration, I
could and would competently testify to those matters.

3. My Department shares responsibility for complying with the order of this Court

1 which requires, among other things, that, "Defendant City of San Diego is ordered to employ all
2 reasonable means to restore the Children's Pool to its 1941 condition by removing the sand build-
3 up and further to reduce the level of water contamination in the Children's Pool to levels
4 certified by the County of San Diego as being safe for humans."

5
6 4. My Department also shares responsibility for complying with this Court's order
7 of October 24, 2008 which provides: "Further, the City is ordered to begin actively researching
8 methods by which it intends to disperse the seals when the time comes."

9
10 5. In response to this Court's order October 24, 2008, representatives of the City
11 have met with over half a dozen marine biologists and federal officials for the purpose of
12 designing an effective seal dispersal plan. Over half a dozen meetings attended by City officials
13 have also taken place. Some of these meetings have been attended by law enforcement officials
14 in anticipation that execution of the seal dispersal plan will result in civil unrest.

15
16 6. At Exhibit A to my Declaration, there is a true and correct copy of the City's
17 current seal dispersal plan.

18
19 7. The projected cost for implementing this seal removal plan on an annual basis is
20 \$633,934. This does not include the projected law enforcement costs associated with keeping the
21 peace at the Children's Pool.

22 I declare under penalty of perjury under the laws of the State of California that the above
23 is true and correct.

24 Executed this 21st day of May, 2009, at San Diego, California.

25 By: 

26 Stacey LoMedico
27 Director of Park and Recreation
28 City of San Diego

EXHIBIT A



Children's Pool Compliance Plan

Upon the order of Superior Court Judge Yuri Hofmann, the City of San Diego is prepared to implement the following Children's Pool Compliance Plan. This plan provides an operational framework for dispersing the population of approximately 200 Pacific harbor seals that make their home on Children's Pool Beach in La Jolla while a) preserving public safety, b) protecting the harbor seals and c) complying with all applicable laws, including the U.S. Marine Mammal Protection Act and Judge Hofmann's order.

The plan has three elements:

- I. Seal dispersal
- II. Public safety
- III. Public outreach on seal aggression

I. Seal dispersal

Judge Hofmann's order to disperse as many as 200 Pacific harbor seals from their home on Children's Pool Beach in La Jolla presents numerous legal and logistical challenges to the City separate from those that will be posed by outside parties. Pacific harbor seals are protected by the National Oceanographic and Atmospheric Administration under the Marine Mammal Protection Act, and any individuals engaged in activity that harms or kills a harbor seal is subject to felony prosecution under the Act. Accordingly, the City must exercise extreme care in the dispersal activities it undertakes. In addition, harbor seals are intelligent creatures that will eventually adapt to whatever tactics the City employs. Through research and interviews with marine mammal experts, the City has determined that any successful dispersal program that meets federal guidelines will be labor intensive, require periodic adjustments in tactics and be ongoing until such time as the conditions that make the habitat attractive are eliminated. The population of Pacific harbor seals along the coast of North America has exploded in the decade since Children's Pool was dedicated. Even if those seals who now make Children's Pool Beach their home were persuaded to desert its comforts for another locale, they almost certainly will be replaced by other seals.

a) Upon Judge Hofmann's order's taking effect, a City employee or contractor will begin dispersing seals from Children's Pool Beach with a sound amplification system. The use of bioacoustics, in this case the sound of barking dogs, has been successful in relocating seals in other jurisdictions, and is an appropriate dispersal method under NOAA guidelines. In addition, this method was described by the plaintiff attorney Paul Kennerson in his Sept. 12, 2008, Memorandum of Points and Authority as an acceptable "means of deterring seals from the Children's Pool."

b. Employees or contractors engaged in dispersing seals will be instructed to remain a safe distance from seals at all times to ensure their physical safety. Members of the public will be informed through signage that, under federal guidelines, only City employees or contractors are allowed to engage in seal dispersal activities and that others observed disturbing or harassing seals are subject to arrest.

c. Seals will be dispersed seven days a week, from 6 a.m. to sunset. Over the course of a 12-month period, this will comprise approximately 4,350 hours of dispersal activity. Because of the potential for harassment or assault by a member of the public, any employee or contractor designated to disperse seals will be provided continuous safety coverage by the San Diego Police Department. The costs of seal dispersal and safety coverage for the dispersal employee or contractor, based on the proposed fiscal year 2010 salaries and benefits and not including overtime or holiday pay or non-personnel expenses for City staff, is estimated at \$688,934.

d. The number of seals on the beach will be counted and recorded at regular intervals to measure the success of the program as well as to determine if there is a need to change the tactics.

e. The City will conduct weekly membrane-filtration testing of bacteriological levels at Children's Pool Beach, measuring levels of coliform and enterococcus. The City Stormwater Department conducted a baseline test at three locations, designated Children's Pool Wall, Children's Pool Bluffside and Children's Pool Ocean, on October 20, 2008.

f. At such time that the seals are no longer susceptible to dispersal by bioacoustics alone, the City will begin employing additional and complementary methods of dispersal. These will include varying the sounds amplified onto the beach, having the City employee or contractor walk up and down the beach while carrying the sound system and/or spraying water. It is anticipated that the intermittent use of several dispersal tactics will have greater long-term success than the continuous use of any single tactic.

g. All dispersal activities will be conducted in a manner that allows the continued public use of Children's Pool Beach.

II. Public protection

The dispersal of Pacific harbor seals from the Children's Pool Beach in La Jolla has a high potential to create an environment requiring a police response. In the past, lesser controversies surrounding the use of this beach have resulted in protests, verbal arguments, assaultive behavior and violations of the public right-of-way. The City must anticipate that these behaviors will recur, and perhaps escalate. In addition, the dispersal of the seals is almost certain to become a national media event, drawing to San Diego crowds of sightseers, news helicopters and animal-rights advocates who may arrive by land or sea to protest the seal dispersal. Compounding the challenges for law enforcement, the area of the Children's Pool, located in the 800-900 block of Coast Boulevard, is highly susceptible to gridlock from vehicular congestion. The San Diego Police Department has developed plans for dealing with public safety issues as they develop and escalate and is coordinating its actions with the San Diego Lifeguard Service, the California Highway Patrol, the San Diego Police Harbor Unit and the Parks and Recreation Department. Consistent with Police Department policy, the staffing levels and costs of these operations are not being disclosed to the public.

a. Upon Judge Hofmann's order's taking effect, the San Diego Police Department will begin to implement its Contingency Plan for Children's Pool. The department will facilitate the smooth flow of

traffic, monitor any demonstrations, keep the peace and respond to calls for service. In the absence of unlawful activity, officers shall maintain a low enforcement profile during a demonstration.

b. It is anticipated that animal-rights activists and organizations from outside the region will participate in protests once the seal-dispersal activity gains public exposure. As the plaintiff attorney Paul Kennerson noted in the Sept. 12, 2008, Memorandum of Points and Authority, "there is no exaggeration in saying a wider world watches" what goes on at the Children's Pool. This plan guards the constitutional rights of all parties, including their rights to exercise free speech and peaceably assemble.

c. In the event the situation escalates or violations of the law occur, the department's role would shift toward enforcement of applicable laws and maintaining order. A uniform presence will be displayed and the officers and supervisors assigned to the Children's Pool will immediately respond to any incident. Officers assigned to the Children's Pool will not tolerate any destruction of property or acts of violence and will take swift and appropriate action to arrest violators.

III. Public outreach on seal aggression

The dispersal of Pacific harbor seals from Children's Pool Beach will inevitably lead to the relocation of those seals on other San Diego beaches, even if that relocation is only temporary. Seals already congregate on the adjacent South Casa Beach and are known to haul out on the beach at La Jolla Cove. While it is possible that some seals may relocate on the rocks near Children's Pool Beach, marine mammal experts say the comparative comforts of sand are not lost on these creature and that sand beaches will be their first choice for relocation. Accordingly, it is reasonable to assume that displaced seals may haul out on the beaches at Pacific Beach, Mission Beach, Ocean Beach and La Jolla Shores, and other City beaches. The arrival of a seal on a public beach is a noteworthy event for most beachgoers and a source of excitement and curiosity, particularly for children. The arrival of dozens of displaced and perhaps anxious seals on a public beach could be a source of alarm. The San Diego Lifeguard Service, whose mission is to protect the public safety on beaches, will take steps to preserve the safety of both the public and the seals.

a. Upon Judge Hofmann's order's taking effect, the San Diego Lifeguard Service will take immediate steps to ensure public safety and protect seals on City beaches by alerting the public to the possibility that the seals who live on Children's Pool Beach may haul out on adjacent beaches, monitoring the activities of displaced seals, and warning the public of the potential danger of interaction.

b. When a seal or seals are observed hauling out on a City beach, lifeguards may find the need to post signs nearby reading: "Caution. Do not approach seals. Seals can bite. Agitated seals may attack. Harassing seals is against the law. In an emergency, contact 9-1-1." The signs, prepared as part of the Children's Pool Compliance Plan, include a drawing of a human hand reaching toward a seal with red circle and slash through it.

c. Lifeguards are prepared to take measures to protect the health and safety of seals that find themselves on unfamiliar beaches, including detaining and arresting individuals who persist in harassing the seals in violation of applicable laws.